

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LAWANDA A. HALL and U.S. POSTAL SERVICE,
POST OFFICE, Miami, FL

*Docket No. 02-159; Submitted on the Record;
Issued July 26, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits effective November 5, 2000 on the grounds that she had no further disability causally related to her December 3, 1992 employment injury; (2) whether appellant has established that she had any continuing disability after November 5, 2000 due to her accepted employment injury; and (3) whether the Office properly denied appellant's request for reconsideration under 5 U.S.C. § 8128.

This case is before the Board for the second time. In the first appeal, the Board reversed the Office's June 26, July 30 and November 22, 1996 decisions terminating appellant's compensation on the grounds that she refused suitable work.¹ The Board found that a conflict in medical opinion existed on the issue of the number of hours per day appellant could work and that consequently the Office did not meet its burden of proof to terminate appellant's compensation under 5 U.S.C. § 8106(c).

By decision dated October 11, 2000, the Office terminated appellant's compensation effective November 5, 2000 on the grounds that the weight of the medical evidence, as represented by Dr. Steve H. Gilman and Dr. Donald E. Pearson, Board-certified orthopedic surgeons and Office referral physicians, established that appellant had no further disability causally related to her accepted employment injury. The Office indicated that based on the opinions of Drs. Gilman and Pearson it had accepted appellant's claim for post-traumatic arthritis of the left knee.²

¹ *Lawanda A. Hall*, Docket No. 97-2379 (issued June 7, 1999).

² The Office previously accepted that appellant sustained left knee strain and a partial tear of the posterior horn of the medial meniscus of the left knee.

In a letter dated November 29, 2000, appellant requested reconsideration of the Office's decision. By decision dated January 16, 2001, the Office denied modification of its October 11, 2000 decision. Appellant again requested reconsideration in a letter dated April 12, 2001, which the Office denied in a nonmerit decision dated June 13, 2001.

The Board finds that the Office did not meet its burden of proof to terminate appellant's compensation benefits.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. The Office may not terminate or modify compensation without establishing that the disabling condition ceased or that it was no longer related to the employment.³ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴

In this case, the Office based its termination of appellant's compensation on its finding that the opinions of the Office referral physicians, Drs. Gilman and Pearson, constituted the weight of the medical evidence. In a report dated October 14, 1999, Dr. Gilman, a Board-certified orthopedic surgeon, discussed appellant's history of injury, reviewed the medical evidence of record and listed findings on examination. He diagnosed obesity and "[p]ostoperative arthroscopy by history with some involvement of both medial and lateral menisci and medial femoral condyle articular cartilage." Dr. Gilman related:

"[Appellant] had previous arthroscopy for lateral meniscectomy in 1990, but her records state that she was totally asymptomatic following that injury and prior to the Fall of 1992. I would therefore feel that she does have some degenerative changes that are within the left knee that are related to her 1992 fall."

Dr. Gilman further found, however, that appellant had no objective evidence of disability. In an accompanying work restriction evaluation of the same date, he determined that appellant could work an eight hours day with restrictions on walking and standing for two to four hours.

By letter dated November 8, 1999, the Office requested that Dr. Gilman clarify his opinion. In a supplemental report dated November 18, 1999, Dr. Gilman related:

"Degenerative arthritis are the changes that occur in the articular cartilage and then secondarily involve the synovium within a joint. [Appellant] does have those changes in her left knee and were described as involvement of the 'medial femoral condyle articular cartilage.' It is virtually impossible to determine how much of this was traumatic and how much is related to her obesity and this would account for the similar problems in the right knee 'to a slightly lesser degree.'"

"I do not feel that the arthritic changes that are present in the knee necessarily relate[] wholly to the fall of 1992. I believe that she should be able to carry out a

³ *David W. Green*, 43 ECAB 883 (1992).

⁴ *See Del K. Rykert*, 40 ECAB 284 (1988).

relatively normal lifestyle for her habitus and therefore do not feel that she has any 'objective disability.'”

In an internal memorandum dated February 29, 2000, an Office claims examiner found that Dr. Gilman’s work restrictions were unspecific and recommended further development of the claim in order to clarify appellant’s physical limitations. On March 16, 2000 the Office referred appellant to Dr. Pearson for a second opinion evaluation.

In a report dated April 24, 2000, Dr. Pearson diagnosed left knee pain, status post three arthroscopic surgeries of the left knee for a medial and lateral meniscectomy, degenerative joint disease of the left knee and obesity. Regarding the cause of the diagnosed conditions, Dr. Pearson stated:

“At this time, she did have a previous injury to her knee dating back to 1990 where she underwent surgery for an apparent partial lateral meniscectomy. The findings from her surgery of 1993 indicated medial meniscus tear and therefore these findings would be related to the injury of December 3, 1992. As far as her underlying degenerative changes, these are not directly related to the injury of December 3, 1992.”

Dr. Pearson further related:

“On examination today, [appellant’s] complaints of pain were out of proportion with her objective findings. At this time from an orthopedic standpoint, I did not find any objective findings that would relate to a disability due to the December 3, 1992 accident. At this point, any continued complaints would be related to her degenerative changes of the knee which are not related to the work injury of December 3, 1992.”

In response to the question of whether appellant had any impairment due to the December 3, 1992 work injury, Dr. Pearson stated:

“At this time from the surgery performed in 1993 of the knee, she had a lateral meniscectomy done which would be related to the injury of December 3, 1992 and she would have sustained a two percent permanent partial impairment of the body as a whole directly related to this injury. At the present time, the majority of her symptomatology seems to be over the medial aspect of the knee which is preexisting. As far as any work restrictions on her activities, I did not find any direct work restrictions related to the December 3, 1992 accident. Any restrictions would be based solely upon her degenerative changes which are unrelated.”

In an accompanying work restriction evaluation, Dr. Pearson found that appellant could work an eight-hour day without restrictions due to her December 3, 1992 employment injury.

In a memorandum dated June 14, 2000, an Office claims examiner requested that Dr. Pearson clarify his opinion. The claims examiner noted:

“You state that the claimant had a ‘lateral’ meniscectomy done in 1993 and that at the present time the majority of her symptomatology seems to be over the medial aspect of the knee which is preexisting. The claimant underwent a partial *medial* meniscectomy and chondroplasty of the medial femoral condyle on September 3, 1993.” On February 8, 1995, she underwent a partial *lateral* meniscectomy with limited synovectomy. Thus, both her medial and lateral meniscus were operated on after her December 3, 1992 work injury. (She did have a *nonwork-related* partial lateral meniscectomy on August 22, 1990.)” (Emphasis in the original.)

In an addendum dated August 1, 2000, Dr. Pearson opined that appellant’s surgery in 1995 to repair a lateral meniscus tear was not causally related to her December 3, 1992 employment injury “based on no lateral meniscus tear at the time of surgery of September 3, 1993.” He related:

“[Appellant’s] current pain is over the medial aspect of the knee and she has underlying degenerative changes of the knee. Her arthritis of the knee is not totally a result of the accident of December 3, 1992. She would have some increased chances to develop arthritis of the medial joint secondary to the surgery. I would allow her to work without restrictions at this time.”

The Board has carefully reviewed the opinions of Drs. Gilman and Pearson finds that their opinions do not have reliability, probative value and convincing quality with respect to the conclusions reached regarding whether appellant has any residual disability due to her accepted employment-related condition. In his October 14, 1999 report, Dr. Gilman found that appellant had degenerative changes in her left knee causally related to her 1992 employment injury and listed limitations on walking and standing in a work restriction evaluation. He further stated, in a November 8, 1999 supplemental report, that appellant’s arthritis of the left knee was not “necessarily related wholly to the Fall of 1992.” Dr. Gilman found that appellant “should be able to carry out a relatively normal lifestyle for her habitus” and consequently did not have “objective disability.” Dr. Gilman, however, did not affirmatively opine that the listed work restrictions were unrelated to appellant’s accepted employment injury. Additionally, his finding that appellant could “carry out a relatively normal lifestyle” is vague and equivocal and does not address the relevant issue of whether she could perform her regular employment duties as a letter carrier.⁵ Thus, Dr. Gilman’s opinion is not sufficient to meet the Office’s burden of proof to establish that appellant had no disability after November 5, 2000.

In a report dated April 24, 2000, Dr. Pearson, a Board-certified orthopedic surgeon, determined that appellant did not have objective evidence of disability due to her employment injury. He found that appellant underwent a lateral meniscectomy after her employment injury but that her current symptoms were over the medial aspect of her left knee. Dr. Pearson concluded that any work restrictions “would be based solely upon her degenerative changes” which he found were not related to her employment injury. After the Office informed him that appellant underwent a medial meniscectomy as well as a later lateral meniscectomy following

⁵ *Jennifer L. Sharp*, 48 ECAB 209 (1996) (medical opinions which are speculative or equivocal in character have little probative value).

her work injury, Dr. Pearson related that appellant's "arthritis of the knee is not totally a result of the accident of December 3, 1992. She would have some increased chances to develop arthritis of the medial joint secondary to the surgery. I would allow her to work without restrictions at this time."

Dr. Pearson's reports are internally inconsistent. In his initial report, he attributed any work restrictions to degenerative arthritis unrelated to appellant's employment injury. In his supplemental report, Dr. Pearson indicated that appellant's arthritis "is not totally a result of the accident of December 3, 1992" and found that she could work without restrictions. He provided no explanation for the change in his opinion or rationale in support of his conclusions. Therefore, Dr. Pearson's report is of little probative value.⁶ Additionally, his finding that appellant's arthritis is "not totally a result of the accident of December 3, 1992" is insufficient to negate causal relationship.⁷ Where the medical evidence reveals that factors of employment contributed in any way to the disabling condition, such condition is considered employment related for purposes of compensation under the Federal Employees' Compensation Act.⁸ Consequently, the reports of Dr. Pearson are not sufficient to meet the Office's burden of proof.⁹

⁶ *Marilyn D. Polk*, 44 ECAB 673 (1993) (a medical opinion consisting solely of a conclusory statement regarding disability, without supporting rationale, is of little probative value).

⁷ The Board notes that the Office accepted that appellant sustained post-traumatic arthritis of the left knee based on the opinions of Drs. Gilman and Pearson.

⁸ *Jack L. St. Charles*, 42 ECAB 809 (1991).

⁹ In view of the Board's disposition of the Office's termination of appellant's compensation, the issues of whether appellant has established that she had any continuing disability after November 5, 2000 due to her accepted employment injury and whether the Office properly denied appellant's request for reconsideration under section 8128 are moot.

The decisions of the Office of Workers' Compensation Programs dated June 13 and January 16, 2001 are reversed.

Dated, Washington, DC
July 26, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member